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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,526	10/27/2003	Jason Hodge	HO-P02403US0	7208

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EXAMINER	
SAYALA, CHHAYA D	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/070,526	HODGE ET AL.	
	Examiner	Art Unit	
	C. SAYALA	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *9/3/02,1/26/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, "treat-size" is of indeterminate scope. Prior art does not define what this size is, because it varies according to breed/size of the animal.
"A specified health indicator" is indefinite because it is not clear if this referes to a vital statistic, a blood profile or a diagnosis. Also, the claim is to a product that has two components: 1) a food substrate 2) functional additives. It is not clear if the functional additive is separate or is part of the substrate in this claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Fone (US Patent 6391375).

The patent teaches that fermentable fiber can be incorporated in packaged pet food and shows such in Example 3. See claim 14.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fone and WO 98/44932 in view of Burkwall, Jr (US Patent 4046922), Marino, WO 97/29763 and Abood (N. American Veterinary Conference Proceedings, vol. 12, 5/1999, downloaded from http://www.thecapsulereport.com/sa18,1-3.htm.).

Fone teaches inulin or chicory fiber in an amount 3.2% or beet pulp in an amount 3.2" in pet foods. The patent includes treats that are packaged. See claims and col. 4, lines 35-60. The WO patent teaches beet pulp and inulin as being useful in pet foods as fermentable fibers, when used in amounts 2-10% (page 7). Note claim 10 which falls within the scope of the instant claims. The patents teach that fermentable fibers are beneficial for GI health, nutrient absorption. See abstract and page 4 of the WO patent. They do not teach the other claimed components of the claims.

Burkwall teaches the use of slippery elm bark as a gum or plant mucilage in pet treats. Gums of vegetable origin are also a source of fiber. (See page 7 of the WO patent). Marino teaches glucoamine salts, including the sulfate as useful for pets (abstract). It is said to bolster the connective tissue. It can be added to snacks, such as bars, dry pet food, etc. See cols. 7 and 8. The WO '763 patent as well as Abood teach the inclusion of glutamine in compositions that are directed to helping intestinal health. Abood advise 0.25 gm/kg in 2 daily servings for small animals. Thus, all the elements of these claims were known in the prior art for being useful for GI health or to help bones and connective tissue. To combine them into a packaged treat as done by Fone for pet treats, when each reference was also drawn to pets, and to optimize amounts would have been within the realm of ordinary skill.

4. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fone and WO 98/44932 in view of WO 99/47000 and Shields, Jr. et al. (US Patent 6156355).

The primary references are as discussed above. They do not teach the elements of claims 5-7.

WO '00 teaches the addition of vitamins such as Bs, C and E (page 13) and evening primrose (0.01-5%) in pet foods. '00 teaches the primrose and the vitamins are useful as antioxidants. Shields et al. also teach antioxidants as a unique blend when they contain vitamins such as E, C and lutein as marigold extract. To use marigold

extract or meal as alternates would be obvious with the reasonable expectation that the meal and extract provide the same function. See col. 5, lines 40-45 in '355. Based on such disclosure and the amounts shown therein, it would have been obvious to incorporate these ingredients in Fone. Note that Shields et al. (at col. 6, lines 17-18) teach that evening primrose oil as providing GLA, known to be important for immune function, while WO '00 at page 17 teaches the same oil as enhancing immune function. Antioxidants are known for similar health benefits and for all these advantages, the incorporation of such ingredients would have been obvious.

5. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fone and WO 98/44932 in view of Shields, Jr. et al., Gluck et al. (US patent 6228418) , Frudakis et al. (US Patent 6165474) and Childers-Zadah (US patent 5786382).

The primary references are as describe above. They do not teach the limitations of the claims 8-11.

Shields et al. teach that the B vitamins are useful in pet foods See col. 4. In addition, mineral supplements are also disclosed, which generally include magnesium, being an important trace element. In this regard, see Gluck et al who teach a pet treat that contains St John's Wort and magnesium salts (col. 3, line 40 and col. 4, line 45). Not ethe amounts. Also, Frudakis et al. teach nutraceuticals in their pet treat, such as St John's Wort and Kava Kava. Thus it was already known in the art thatthese ingredients were useful nutraceuticals to be used in pet foods. Similarly, Childers-

Zadah disclose that Valerian root extract (see claims) provide a mild sedating effect while providing a scent-attractant for pets. Col. 1. Based on such disclosure and the amounts shown therein, it would have been obvious to incorporate these ingredients in Fone.

6. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fone and WO 98/44932 in view of the admitted prior art in the specification at page 4, lines 17-25, Richar et al. (US Patent 5405836) and further in view of Shields, Jr. et al.

The primary references are as described above. The patent does not show the elements of the claims 12-13. The specification admits of prior art which disclose that 3 ingredients were known to remove odors. Zinc salts in pet products were known to remove odors such as hydrogen sulfide, this including zinc acetate. (See Richar et al.). Yucca removes odors of pet feces, when Yucca is fed to a pet, and charcoal is an adsorbent for noxious gases. To incorporate all 3 ingredients in Fone, all found useful for the same purpose, would have been prima facie obvious. Yucca is already well established as a common pet food ingredient and to fathom amounts therefore, would have been within the ambit of ordinary skill. See Shields at col. 11, lines 35-40 for other benefits of Yucca use in pet foods.

7. Claims 14-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fone and WO 98/44932 in view of Burkwall, Jr (US Patent 4046922), Marino, WO 97/29763 and Abood (N. American Veterinary Conference Proceedings, vol. 12, 5/1999,

downloaded from http://www.thecapsulereport.com/sa18,1-3.htm.) and further in view of Shields, Jr. et al., Wang et al. (US Patent 6379725), Miller (US Patent 5439924) and Cook et al. (US Patent 4451488).

The primary references are as discussed in a preceding paragraph(s). Fone relies on NRC guidelines to provide for a balanced diet using base ingredients such as protein, carbohydrate and fiber, etc. See col. 4. Fone does not teach these ingredients. It is known that the base composition of all pet foods would have a typical composition as given in the NRC guidelines for a balanced diet for the pet. Such amounts are shown in Shields, Jr. (col. 16). Fone also teaches that dry foods typically have a 5-15% moisture content. Crude protein is generally around 20% minimum. Also the addition of antimicrobials such as live cultures is known. See col. 11, line 60 to col. 12, line 5. The various proteins of claim 17 are shown in Fone at col. 4, lines 50-55.Note that the patent to Shields discloses rice as the primary grain source at col. 5. To use rice flour would have been an obvious alternate.

Wang et al. teach pet treats that carry hygiene additives and other ingredients, some of which are glycerol (a humectant), gelatin, and potassium sorbate (col. 3, line 35 and col. 5, line 8). Note the amounts at Table 1 and 4A, which coincide with those claimed. Additionally, note the water content in claim 1.

Even though the above patents do not teach the treat as a chewy tablet, the use of such chewy tablets to deliver medication to pets are known in the art as shown by Miller. At col. 10, Miller discloses delivering medication for veterinary practice for oral administration. The tablets include sugars, rice starch, gelatin etc. (col. 10, lines 10+).

Also see examples. The addition of rosemary extract as a known flavorant as well as an antioxidant would have been obvious based on Shields Jr 's disclosure.

Each of the ingredients claimed therefore, has been shown to be useful in prior art each for its own established purpose, as discussed. To incorporate these in the primary reference combination would have been obvious based on the advantages discussed herein.

With regard to claims 24-26, Cook et al. teaches the preparation of a food bar which is typical. It involves mixing the dry ingredients, and the wet ingredients separately, heating the ingredients to a temperature which is similar to the range claimed herein and then molding it into a bar (col. 4). Food bars are generally etched so that they can be broken into smaller pieces, as in a chocolate bar. Therefore applicant was not the first to invent such a concept. Even though this patent does not teach heating the dry ingredients or the final mixture, to maintain all ingredients at the same temperature in order to prevent cooling before the molding step would have been an obvious expedient. With regard to claim 23, Fone teaches a biscuit-like kibble, which would render this claim obvious also.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

C. SAYALA
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Group 1700.